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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 RICHARD BREES,

10 Plaintiff,

11 v.

12 HMS GLOBAL MARITIME INC, et al.,

13 Defendants.

CASE NO. 3:18-cv-05691-RJB

ORDER

14 THIS MATTER comes before the Court on review of the record. The Court is familiar  
15 with the record and the materials herein, and it is fully advised.

16 For the reasons set forth below, Defendants Pierce County, Tiffany Garcia, and  
17 MaryBeth DiCarlo should be granted leave to amend or withdraw their Motion to Dismiss for  
18 Failure to State a Claim (Dkt. 51); and Defendants Steve Caputo, Dominick De Lango, HMS  
19 Ferries Inc., HMS Global Maritime Inc., Derick Leenstra, Mylinda Miller, Tara Reynolds, and  
20 Thomas Ripa (“HMS Defendants”) should be granted leave to amend or withdraw their CR  
21 12(b)(6) Motion for Dismissal of Claims based on Alleged Violations of the Washington State  
22 Constitution (Dkt. 80). If Defendants do not amend or withdraw their pending motions to dismiss  
23 (Dkts. 51, and 80), they should brief the Court, in writing, as to whether their pending motions to  
24 dismiss relate to the operative complaint (Second Amended Complaint, Dkt. 83) in this matter.

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On July 12, 2019, Plaintiff untimely responded in opposition to County Defendants' motion to dismiss. Dkt. 72.

Plaintiff filed a response to the order to show cause (Dkt. 78) and County Defendants filed a response to the order to show cause (Dkt. 79).

On September 3, 2019, Plaintiff filed a Second Amended Complaint. Dkt. 83. Among other amendments, the Second Amended Complaint removed Lauren Behm as a named Defendant. *Compare* Dkt. 39, at 3–6, *with* Dkt. 83, at 3–6.

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1 Dkt. 86. First, County Defendants argue that the Second Amended Complaint deletes Defendant  
2 Lauren Behm as a named Defendant, and she should be dismissed with prejudice. Dkt. 86, at 3.  
3 Second, County Defendants argue that personal jurisdiction over Defendants, Tiffany Garcia,  
4 Lauren Behm, and MaryBeth DiCarlo is absent because Plaintiff has not served any amended  
5 complaints on them. Dkt. 86, at 3–4. Third, County Defendants argue that the Second Amended  
6 Complaint fails to assert a federal or state claim against County Defendants. Dkt. 86, at 4–5.

7 On August 15, 2019, HMS Defendants filed a CR 12(b)(6) Motion for Dismissal of  
8 Claims based on Alleged Violations of the Washington State Constitution. Dkt. 80. HMS  
9 Defendants also filed a notice of errata replacing page one of their motion to dismiss. Dkt. 82.  
10 On September 3, 2019, Plaintiff filed a response in opposition to HMS Defendants’ Motion to  
11 Dismiss. Dkt. 84. Plaintiff also filed a Motion to Compel Discovery against the defendants. Dkt.  
12 86. On September 6, 2019, HMS Defendants filed a reply. Dkt. 87.

13 Below, the Court first discusses this case’s unusual and confusing procedural history.  
14 Second, the Court discusses the dismissal of Defendant Lauren Behm. Finally, the Court briefly  
15 discusses personal jurisdiction and service of process.

## 16 II. DISCUSSION

### 17 A. Unusual and Confusing Procedural History

18 Although County Defendants’ motion to dismiss (Dkt. 51) and HMS Defendants’ motion  
19 to dismiss (Dkt. 80) may have merit, they were drafted with respect to Plaintiff’s Amended  
20 Complaint (Dkt. 39)—which is no longer the operative complaint in light of Plaintiff having  
21 filed a Second Amended Complaint (Dkt. 83). This has produced an unusual and confusing  
22 procedural history.

1 Therefore, in an effort to simplify issues emerging from the record, and to give the  
2 defendants an opportunity to fully and fairly defend themselves against Plaintiff's claims in the  
3 Second Amended Complaint, Defendants Pierce County, Tiffany Garcia, and MaryBeth DiCarlo  
4 should be granted leave to amend or withdraw their Motion to Dismiss for Failure to State a  
5 Claim (Dkt. 51). HMS Defendants should be granted leave to amend or withdraw their CR  
6 12(b)(6) Motion for Dismissal of Claims based on Alleged Violations of the Washington State  
7 Constitution (Dkt. 80). If the defendants do not amend or withdraw their pending motions to  
8 dismiss (Dkts. 51; and 80), they should brief the Court, in writing, as to whether their pending  
9 motions to dismiss should be construed as relating to the operative complaint in this matter. Any  
10 such amendments, notices of withdrawal, or briefs should be filed by September 27, 2019. Any  
11 opposition papers to any such amendments, notices of withdrawal, or briefs shall be filed by  
12 October 14, 2019; any reply papers shall be filed by October 18, 2019.

13 The Order on Pierce County Defendants' CR 12(b) Motion to Dismiss (Dkt. 74) should  
14 be stricken, and Plaintiff's Motions to Compel against Pierce County (Dkts. 62; and 63) should  
15 be renoted for September 27, 2019.

16 **B. Dismissal of Defendant Lauren Behm**

17 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*  
18 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992). Here, Plaintiff deleted any mention of Lauren  
19 Behm from the Second Amended Complaint, even where the complaint discusses the Pierce  
20 County employees, e.g., Dkt. 83, at 13–15, and Plaintiff removed her from the list of named  
21 defendants. *Compare* Dkt. 39, at 3–6, *with* Dkt. 83, at 3–6. It appears that Plaintiff has  
22 abandoned his claims against Lauren Behm.  
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County Defendants argue that the Court should dismiss with prejudice Lauren Behm, but she is no longer a party to the case. Dismissal is not appropriate or necessary. Therefore, to the extent that County Defendants move to dismiss with prejudice Lauren Behm, that motion should be denied as moot.

### C. Personal Jurisdiction and Service of Process

County Defendants argue that there is no personal jurisdiction over Defendants Tiffany Garcia and MaryBeth DiCarlo and Lauren Behm (“County Employees”) because Plaintiff fails to show service of process on these Defendants. Dkt. 86, at 3–4.

Plaintiff filed four addressed summons forms with the Second Amended Complaint. Dkts. 83-1–4. Two of them were addressed to MaryBeth DiCarlo and Tiffany Garcia. Dkts. 83-3–4. The Court had previously granted Plaintiff’s request for assistance as to service pursuant to Rule 4(c). Dkts. 65; and 77. Accordingly, the Clerk will issue the Second Amended Complaint’s summons and serve them on behalf of Plaintiff. Therefore, at this time, the Court need not decide matters of personal jurisdiction and service of process regarding Defendants Tiffany Garcia and MaryBeth DiCarlo.

### III. ORDER

THEREFORE, it is hereby ORDERED THAT:

- Defendants Pierce County, Tiffany Garcia, and MaryBeth DiCarlo are **GRANTED LEAVE** to amend or withdraw their Motion to Dismiss for Failure to State a Claim (Dkt. 51). Defendants Steve Caputo, Dominick De Lango, HMS Ferries Inc., HMS Global Maritime Inc., Derick Leenstra, Mylinda Miller, Tara Reynolds, and Thomas Ripa are **GRANTED LEAVE** to amend or withdraw their CR 12(b)(6) Motion for Dismissal of Claims based on Alleged Violations of the Washington State

1 Constitution (Dkt. 80). If Defendants do not amend or withdraw their pending  
2 motions to dismiss (Dkts. 51, and 80), they shall brief the Court, in writing, as to  
3 whether their pending motions to dismiss should be construed as relating to the  
4 operative complaint (Second Amended Complaint, Dkt. 83) in this matter. Any such  
5 amendments, notices of withdrawal, or briefs shall be filed by **September 27, 2019**.

6 Any opposition papers to any such amendments, notices of withdrawal, or briefs  
7 shall be filed by **October 14, 2019**; any reply papers shall be filed by **October 18,**  
8 **2019**;

- 9 • The Order on Pierce County Defendants' CR 12(b) Motion to Dismiss (Dkt. 74) is  
10 **STRICKEN**;
- 11 • To the extent that Defendants Pierce County, Tiffany Garcia, and MaryBeth DiCarlo  
12 move to dismiss with prejudice Lauren Behm, that motion is **DENIED AS MOOT**;  
13 and
- 14 • The following motions are **RENOTED** for **October 18, 2019**:
  - 15 ○ Defendants Pierce County, Tiffany Garcia, and MaryBeth DiCarlo's Motion  
16 to Dismiss for Failure to State a Claim (Dkt. 51).
  - 17 ○ Plaintiff's Motion to Compel Pierce County to Complete or Conduct  
18 Investigation of Plaintiff's Claim (Dkt. 62).
  - 19 ○ Plaintiff's Motion to Compel Pierce County Defendants to Produce Email  
20 Requested Under Public Records Act (Dkt. 63).
  - 21 ○ Defendants Steve Caputo, Dominick De Lango, HMS Ferries Inc., HMS  
22 Global Maritime Inc., Derick Leenstra, Mylinda Miller, Tara Reynolds, and  
23

1 Thomas Ripa's CR 12(b)(6) Motion for Dismissal of Claims based on  
2 Alleged Violations of the Washington State Constitution (Dkt. 80).

3 ○ Plaintiff's Motion to Compel Discovery (Dkt. 85).

4 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
5 to any party appearing *pro se* at said party's last known address.

6 Dated this 9<sup>th</sup> day of September, 2019.

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8 ROBERT J. BRYAN  
9 United States District Judge